

Additional Steps Could Improve Consistency of Final Decrees

Balanced against the factors suggesting a full-scale re-examination would not be beneficial, there are some issues with verified claims that are either problematic or unclear. Some elements of some claims could be subject to a higher degree of error. Although these problems do not appear to be significant enough to undermine the water right itself, further review and clarification could help improve the accuracy of final decrees.

Staff at both the Water Court and DNRC have emphasized that a fundamental goal of the adjudication process is to provide for equal treatment of all water users and consistency in the quality and accuracy of final decrees. Inconsistencies in how certain claim elements are presented in final decrees could cause confusion among water users and lead to further questions about the reliability of the adjudication process. Discussions with DNRC staff have indicated the department is considering a proposal that would attempt to address some of the issues identified with verified claims, without conducting any re-examination. The DNRC proposal would involve automated identification of errors and inconsistencies prior to summary report preparation to make verified claims more consistent with examined claims. The Water Court has indicated this approach could be viable.

Verification was completed prior to the development of many of the system-based controls used by DNRC to provide consistency and identify errors/inaccuracies during summary report production. Because verified claims were not subject to these same system-based standards, inconsistencies between different claims were not addressed prior to decree issuance. DNRC and the Water Court could remedy this situation by developing procedures to ensure problematic elements of certain verified claims are reviewed for consistency and accuracy. Any such procedures would need to be reviewed by the court to ensure they could not adversely affect subsequent issuance of preliminary or final decrees. Any further review of claim elements should not be applied to elements of claims that have previously been subject to Water Court litigation.

RECOMMENDATION #2

We recommend the Water Court and the Department of Natural Resources and Conservation address the status of verified claims by developing procedures for the application of system-based standards, and summary report preparation to certain verified claims.

WATER POLICY INTERIM
COMMITTEE. 2013-14

March 18, 2014 Exhibit No. 2